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Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, DC 20554

In the Matter of Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement and Construction of Broadcast Station Transmission Facilities	MM Docket No. 97-182

COMMENTS OF RONALD E. CASTRO AND JACK W. FRITZ II, D.B.A. RESULTS RADIO OF SONOMA, LP.

TABLE OF CONTENTS

084

I. Executive Summary

Ronald E. Castro and Jack W. Fritz II have an ownership interest in a small-market Class A FM station in Sonoma County, California. They wish to offer commentary in the matter of MM Docket No. 97-182 based on their experience in an on-going battle with the county government, spurred by owners of property nearby a large parcel of land where the commenters wish to locate three towers, none of which will extend more than *five feet* above the tops of surrounding trees. The move of the station's facilities is prompted by cancellation of the lease on their current tower site by the new property owner.

During the pendancy of the proceedings, which have dragged on for ten months, and which could extend for years in the future, the commenters have encountered a bewildering array of obstacles to frustrate their progress. These obstacles are the primary result of one particular neighbor, who, angered by her inability to negotiate a deal to rent land for the towers on her own property, has been able to manipulate vague county and state telecommunications and environmental regulations in retaliation against Castro and Fritz. With a fast-approaching deadline to vacate its current site, the station could be forced off the air for years.

Perhaps most frustrating are onerous requirements for telecommunications facilities that do not apply to other similar construction projects. Also that opponents have been able to delay the project time and time again, based solely on unsupported speculation that environmental damage might be caused. Despite demonstrating to the satisfaction of county staff that the project is environmentally sound (a process that has thus far consumed more than

$100,000, ten months and four public hearings), and despite securing the staff's recommendation of approval, the county has thus far denied the project. An appeal is pending as of this writing.

The commenters wish to urge the FCC to include FM broadcasters in federal preemption of state and local ordinances, since they are growing exponentially, are not in harmony with federal telecommunications policy and threaten to severely disrupt local radio services, while stripping the FCC of its exclusive regulatory oversight. Needed are policies mandating categorical exemptions for FM broadcast tower siting and resiting, expeditious action on applications for same, and a one-stop appeals process using private arbitrators, guided by a comprehensive set of policies to be promulgated by the Commission. Additionally, penalties should be prescribed for any delays, denials or other interference caused by local or state governments, individuals or groups unsuccessfully opposing tower projects, since there is currently no disincentive for such counterproductive conduct.

II. Qualifications and Interest of Commenters RONALD E. CASTRO and JACK W. FRITZ II, d.b.a. RESULTS RADIO OF SONOMA, LP:

The commenters propose to file a response in the matter of the FCC's **MM Docket No. 97-182** regarding tower siting preemption. Mr. Castro is well qualified to offer such commentary on the basis of thirty years of employment experience as a commercial radio broadcaster. Castro has served in both management and non-management positions, in programming, engineering, general management and ownership. He is currently the Managing General Partner of Results Radio of Sonoma, LP., licensee of radio station KRPQ, Rohnert Park, CA., and serves as its General Manager.

Mr. Fritz is the president of Fritz Communications Inc., which is a corporate General Partner in Results Radio of Sonoma, LP. Mr. Fritz is well qualified to offer commentary on the basis of his ownership and management of radio stations for the past ten years, including nine years as owner and manager of WXKX and WXKG in Parkersburg, WV. Mr. Fritz is currently involved in the day-to-day management of KRPQ.

KRPQ is a small-market, class "A" FM radio station with 14 full-time employees, situated in the 115th-ranked Arbitron market of Santa Rosa, CA. The station serves most of the population of Sonoma County, CA. Results Radio's interest in this proceeding is as licensee and operator of this station.

Neither Mr. Fritz nor Mr. Castro are attorneys, nor has an attorney prepared these comments on their behalf.

III. Scope of Commentary

MM Docket 97-182 seeks comment on a proposal to preempt certain local and state zoning and land use ordinances that unduly prohibit or inhibit the siting or resiting of antennas in various broadcast services. The Petitioners, the National Association of Broadcasters ("NAB") and the Association of Maximum Service Television, Inc. ("MSTV"), have advanced the argument that the ambitious schedule of implementation of the digital television service ("DTV") creates a need for as many as 1,000 new towers in the next five years, and that the existence of state and local restrictions on such antennas will frustrate meeting the deadlines. The Petitioners also point out that many FM radio broadcasters will be forced to move their facilities in instances where tower space leased to them by TV broadcasters will be reassigned to new DTV antennas.

In its discussion of MM Docket 97-182, the FCC states:

> "The petitioners' proposed rule would cover siting of all broadcast transmission facilities construction. That is, petitioners have not limited their preemption rule to DTV-related construction, including the involuntary relocation of FM antennas now collocated on television towers. *It is less clear that preemption will be needed where broadcasters do not face exigencies such as DTV construction deadlines.* There are now over 12,000 radio and 1,500 television station licenses outstanding, totals which suggest that generally *compliance with state and federal laws relating to broadcast station construction and operation has been possible and that state regulation has not been an insuperable obstacle* to the exercise of the Commission's "powers to promote and realize the vast potentialities of radio."" (emphasis added)

If it is "less clear" to the Commission that interference by numerous municipal, state and federal agencies has not been "an insuperable obstacle" to individual FM broadcasters, as well as to the laudable goals of the FCC, it is simply that the Commission is unaware of the pervasive, oppressive and chilling effects such agencies can and do regularly exert on small market FM broadcasters. The Commission is to be commended for examining this issue which has ballooned out of control in recent years. It is the strong opinion of these commenters that indeed, state and local regulation, including an avalanche of recently enacted ordinances prompted by the proliferation of cellular telephone tower facilities, have caused "insuperable obstacles" to existing and emerging broadcasters, and are severely frustrating their attempts to serve their communities. It is further the opinion of the commenters that the full impact of these ordinances has not yet been seen, but will become increasingly apparent in years to come as leases expire, property changes hands, towers require replacement and burdensome regulations continue to grow unabated. Local radio broadcasting faces potential devastation as coverage areas decrease, and stations are restricted in their attempts to serve ever-growing and constantly changing population centers, while facing competitive challenges from an onslaught of new

technologies. The scope of the comments herein will be on the need for relief in the form of federal preemption for FM broadcasters in the siting or resiting of antennas, *regardless of implementation of DTV*. The commenters will demonstrate that the need for such relief is acute and overdue.

IV. Commentary Issues

Local ordinances place aesthetics over need for broadcast services

In recent years, the explosive growth of the cellular telephone industry has resulted in thousands of new telecommunications facilities. The first such facilities were often collocated on existing broadcast or other types of towers, however, as the number of cellular users increased, causing a proportionate increase in the number of cells, dedicated cellular facilities began springing up along highways, and in business and residential areas. Concerns over aesthetics and irrational fears of health hazards and potential interference to consumer electronic products prompted local regulators to rush in a haphazard manner to enact ordinances to exert control over construction of communications facilities.

Value of services not assessed. Balance not sought.

Typical of such ordinances is one enacted in November, 1996 by the Sonoma County (California) Board of Supervisors, the full text of which is included in Appendix A. While most of the 26 pages of single-spaced text of Ordinance No. 4973 describes prohibitions, restrictions, requirements, mitigations, etc., only one paragraph gives even a lip-service, off-hand acknowledgment that broadcasters might offer some benefit to the community. Section I. Paragraph F. states:

> "Sonoma County recognizes the role played by all members of the telecommunications industry and community in providing critical emergency service assistance to the residents, businesses, and local agencies of the County. Of particular note is the contribution of the amateur radio community with is able to greatly enhance communications efforts during emergencies."

"Ham" operators rated special mention, but broadcasters did not receive even a grudging reference. It is no surprise then that no balance is sought or offered anywhere in the ordinance between aesthetics and services provided to the public by broadcasters. Nor is there any consideration of the siting requirements of the FCC's Rules and Regulations. In fact, other than defaulting to federal standards for NIER and interference to consumer electronic equipment, the role of the FCC in regulating communication facilities siting is never mentioned in the document, ignoring the FCC's paramount role in regulating broadcast facilities.

Over-reaching Nature of Ordinances

To call the Sonoma County ordinance "over-reaching" is an understatement. In section II, a telecommunications facility is defined as:

> "...a facility that sends and/or receives electromagnetic signals, including antennas and towers to support receiving and/or transmitting devices along with accessory structures, and the land on which they are all situated."

The breadth of this definition is astonishing. *Anyone* wishing to erect *any* antenna can be subjected to a litany of requirements, including notification of neighbors, a visual analysis, environmental reviews by county staff, local design review analysis, and an extensive alternatives analysis, plus requirements for visual mitigation. If neighbors object, the applicant can be subjected to a

series of public hearings, possibly an Environmental Impact Report ("EIR") costing $50,000 to $75,000 or more, as well as court challenges and several years of litigation. Obtaining a permit can cost more than $300,000, and even then, permission to erect it might ultimately be denied. Since many stations rent property for placement of their towers, owners of the property can be subjected to such harassment and delays that they often find reasons to back out of the agreement.

Political Nature of Anti-Tower Regulation

Local politicians in many communities have overreacted to loud complaints by a small, vocal minority of anti-growth activists, and self-described environmentalists. Many have expressed vehement opposition to all telecommunications devices based on an irrational fear of health hazards. Others, complaining about aesthetics, want to deny to *any* structure that is remotely visible, even if only with the aid of binoculars. That politicians have bowed to this pressures is clearly reflected in ordinances that unfairly "load the dice" against approval of any telecommunications facilities, without prohibiting them *per se*. These politicians have crafted several clever ways to "end run" the legitimate goals of local broadcasters and the FCC in an effort to please noisy critics, such as the following:

a) Excessive reliance on aesthetic and environmental concerns.

b) Discouraging or prohibiting siting in "Scenic Resource" zones, when, in fact, all areas with elevation sufficient to have line-of-site views coverage to population centers have been declared Scenic Resource zones.

c) Language that prevents construction of and extends onerous regulatory requirements to certain telecommunications *related* facilities (roads, buildings) that would otherwise be permitted for other uses, such as homes, farms, public parks, public works, etc.

d) Excessive requirements for visual mitigation.

e) Unreasonable requirements for collocation, even where such would result in diminished coverage or mutual interference.

f) Requirements for environmental reviews and/or expensive EIR's.

g) Requirements that applicants for facilities provide legal defense for the local government if a ruling in the applicant's favor is challenged.

h) Requirements of showings of economic benefits to the community.

i) Prohibitions on removal of trees and other plants, regardless of species or protection status.

j) Loose procedural rules resulting in an endless array of delaying tactics.

k) Numerous subjective evaluations that can easily be the basis for lengthy and expensive court challenges and appeals.

Additionally, many ordinances effectively strip the FCC of its congressionally-mandated authority to regulate Non-Ionizing Electromagnetic Radiation ("NIER") emissions, as well as interference to consumer electronic equipment, substituting regulations which are poorly written and that often make compliance impossible or impractical.

Telecommunications Users Singled-Out for Unfair Rules That Don't Apply to Others

As an example of how these tactics can be used to discourage broadcasters, the Sonoma County ordinance reads: "Structures and roads on slopes of 30% or greater shall be avoided." (Sec. 26-88-130 (a)(3)(vi)). It is interesting to note that the county allows structures and roads on slopes greater than 30% for uses *other than* telecommunications facilities, such as private homes, logging access, "ranch roads", even many public streets and highways. Since the most practical sites for FM stations are at the tops of steep hills, especially in the mountainous terrain near the Northern California coast, the only plausible explanation for rules of this nature is to stymie the construction of telecommunications facilities.

In almost all cases, public hearings on tower projects are required. These hearings often turn out to be highly politicized "kangaroo courts", pitting business owners against environmental extremists in a forum with vague rules of procedure and no rules of evidence. Highly organized opponents use the opportunity to "filibuster" meeting time, cloud issues and create delay. A simple inference, unsupported by evidence, that there might be some objectionable aspect of the project, can prompt a continuance for further study. Such delays can go on for months. The unbalanced nature of such hearings is evident in that usually no testimony of the value of the broadcast service is considered, making the proceeding very one-sided and giving broadcasters little foundation on which to build a defense for their projects. Economic justifications are rarely considered to be important, and technical justifications are simply not understood by those charged with the decision-making process. Opponents hire "experts" who opine, often

without the benefit of thorough engineering research, that superior siting options exist elsewhere.

The requirement of EIR's in many ordinances, or during appeals to state courts, are perhaps the most onerous of all. Such reports are expensive, usually in the $50,000 to $75,000 range, as well as time consuming, with a typical report taking six months to prepare. In California, the cost of an EIR is borne entirely by the site applicant, yet the applicant is generally forbidden from participating in its preparation or its conclusions. These reports are generally prepared by people with no experience in broadcast engineering, and with no concern for public service issues of for the financial vitality of an important industry, or an individual station. EIR's focus on "alternatives analysis", which often result in choices that are impractical, as well as financially or technically infeasible, and which almost always represent a compromise in service to the public. Nowhere in EIR's is the public benefit of broadcast service considered or factored into the equation of tower siting.

Where there are two adversarial positions in such a dispute, one side is always dissatisfied with the outcome. This can lead to lengthy, expensive and unnecessary litigation, and endless appeals. In a case currently pending in Idaho, a small market FM station has been subjected to seven years of litigation, and no end is in sight. Can this be considered to be in the public interest?

Who's In Charge Here?

These local ordinances and state laws have created an "open season" for individuals who abuse the rules for their own surreptitious purposes. Examples of those with ulterior motives who typically challenge tower installations include:

a) People who are generally opposed to all growth and development, regardless of its nature.

b) Self-proclaimed "protectors of the environment" who believe that even minute amounts of non-ionizing radiation create unacceptable health hazards.

c) "Green-mailers" looking for pay-offs to not oppose a project.

d) Those dissatisfied with lease negotiations.

e) Land owners who fear the resale value of their property may be impacted.

f) Listeners who oppose specific programs broadcast by the stations, such as controversial talk-show hosts.

g) Owners and managers of competing broadcast stations who wish to damage a competitor.

Since there is no down-side to such behavior, it is practiced with impunity. Because of the delays and expense such tactics can bring, even the threat of a challenge to a proposed project is often enough to kill it. The result is a chilling effect on the orderly growth of services and on the efficient use of spectrum in the public interest, as well as a potential for restraint of trade and inter-state commerce. Thus, local and state governments have taken over as the *de facto* regulators of broadcast service allocation, with the practical effect of preempting the FCC and frustrating its laudable goals of providing a competitive, reliable and effective commercial broadcast service.

V. Specific Instances

The Nightmare Begins

In July of 1995, KRPQ was informed by the new lessor of its transmitter site that the lease would be terminated under the terms of the contract in two years. KRPQ began lease negotiations with the nearby neighbors, who owned a home situated on the same hill, some 3,000 feet from the existing tower. Negotiations proceeded over several months, but ultimately failed and were terminated by the land owners who demanded terms that could have forced the station to vacate on short notice. Shortly thereafter, KRPQ located a 79.26 acre parcel of vacant land available for purchase adjacent to both the neighbor's property and the existing property. KRPQ's management concluded that this was the only site in the county that was available to them that would meet the FCC's technical requirements, while providing a service area comparable to the existing licensed facility.

Hearing that KRPQ was seeking a use permit for a neighboring property, the neighbors with whom negotiations had failed, became enraged that the station was proposing an alternative within their "viewshed" and in a phone call to KRPQ Managing General Partner Ron Castro, vowed that they would stop the project at all costs. They proceeded to organize their neighbors, touting visions of "the Sutro tower" (an 1,100 foot self-supporting tower that dominates the San Francisco skyline), while instigating fears of NIER, increased traffic, and environmental damage. In fact, the original proposal was for a single 130 foot tall tower (only 70 feet of which was above the surrounding tree tops), a 550 square foot building and a 10 foot wide dirt road, far less in scope and nature than the 28 homes that the neighbors had constructed on nearby and adjacent lots. The nearest home with a view to the site was 3,000 feet from the tower.

Frogs, Fritillaria and Fertility Rites of Eagles

During the course of five subsequent hearings(there are still more scheduled as of this writing), and numerous phone calls, letters and visits to county staff members, the neighbor with whom negotiations had failed raised objection after objection and has stalled the process for nine months. With scant or no evidence to support her claims, she and the other neighbors have raised the following objections:

a) That the project is not in compliance with the county's tower ordinance.

b) The project is not in compliance with the county's General Plan.

c) That the road is on slope more than 30%.

d) That the project is incompatible with the surrounding community.

e) That traffic jams and unsafe streets will result from the project.

f) Unfounded concerns about health hazards.

g) Concerns that *fritillaria liliacea,* commonly known as fragrant fritillary, (a non-endangered, non-threatened, non-protected native California plant) was on the property, and would be damaged.

h) That nesting Golden Eagles (again non-endangered, non-threatened species) would have their mating cycle disrupted.

i) That the red-legged frog (a protected species) might reside on the property.

j) That subterranean conditions would cause the road to fail.

k) That run-off from the road would endanger residences.

l) That numerous trees would be cut down.

m) That a rock pile at the tower site might be a Native American religious site.

n) The project requires a full EIR.

It is interesting to note that none of the above complaints would have prevented the property owners from constructing a luxury home on the parcel, and in fact, county records show that a former owner received permission to construct a 6,500 square foot home there, although it was never built. Just as interesting, is that despite claiming to be concerned about the nearby environment, none of the objections raised have prevented any of the complaining neighbors from engaging in recreational activities and construction on parcels adjacent to the subject property, which would assumably result in trampling the same types of religious sites, frogs, *fritillaria* and fertility rites of the golden eagles that she is working so hard to defend. The entire process is an exercise in hypocrisy.

KRPQ Has Been Reasonable, Responsible and Cooperative

To deal with the various concerns of the neighbors, and to comply with the ordinance, KRPQ has taken the following measures:

a) Hired a surveyor/hydrologist and a civil engineering firm to fully design an unpaved access road, complete with fully engineered erosion and siltation control measures, to specifications to which many paved public roads have not been subjected.

b) Hired a geologist who conducted a survey indicating that there was no geologic reason why the road, building or tower could not be successfully constructed.

c) Hired the consulting engineering firm of Hammett & Edison who certified that the project was in compliance with the

FCC's NIER requirements, and further that alternatives to the subject property presented by the neighbors were comparable neither in population or geographic coverage to KRPQ's proposed site.

d) Hired computer artists, whose credentials include computer animation in the movies Star Wars and Independence Day to produce photographs of what the towers would look like from numerous views and distances.

e) Hired a certified arborist who spent days doing a detailed survey of every tree that might be effected by the project. Over 100 trees were inspected, tagged and cataloged in a 50+ page report. He determined that only 71 trees out of more than 7,000 on the property would be affected, and that there would be no visual impact from the road project, and virtually none from building or the tower itself. He also designed a complex visual mitigation and tree preservation and restoration project that KRPQ has included in its proposal.

f) Hired an ecologist who did a site survey and concluded that there were no red-legged frogs[1] and no *fritilaria* on the property.

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[1] The protected taxonomic sub-species of the red-legged frog is defined by U.S. Fish and Wildlife Service according to the specific geographic location of its habitat. The subject property is not in any so-defined area, therefore, any species that might exist there are not protected. Notwithstanding, the biologist found no habitat that could possible support any similar or related species on the property.

g) Used methods recommended by the California Highway Patrol to determine that there would be less than a 1/2% effect on traffic, even with twelve collocated users at the site.

h) Agreed to limit construction to the months of August through January (a portion of which is during the rainy season) to mitigate interference with the mating cycle of the golden eagles, despite the fact that after an exhaustive search their nests were not found and their residence on the property has never been confirmed[2].

i) Hired an archeologist whose site survey determined that the rock pile at the tower site was of 20th Century origin, probably not a Native American religious site. Further invesitgation by KRPQ determined that the pile was actually a "play fort" built within the past 15 years by a previous owner while on a camping trip with his nephew.

The original project called for a single 130 foot tall tower, however at the request of the Bennett Valley Design Review Committee ("BVDRC") the project was revised to a 100 foot tall tower. At the suggestion of the Board of Zoning Adjustment, the project was revised again, this time to include three towers, each seventy feet tall,

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[2] The only evidence that there are golden eagles nesting on the site came from Department of Fish and Game ("DFG") official who wrote a letter to staff that an unidentified "friend" who had no credentials in biotic species identification, and who was admittedly trespassing on the subject property, thought he *might* have seen a *bald* eagle fly over. Since bald eagles have never been known to reside in Sonoma County, it was thought that the "friend" may have actually spotted a golden eagle.

each supporting one small antenna, with tops protruding no more than five feet above the tree tops. Even this scaled-back project was unacceptable to the Knefs, who want the project killed altogether in apparent retaliation for their failed contract negotiations with KRPQ.

Despite provocation, KRPQ has always been the good citizen, and has always attempted to negotiate in good faith with the neighbors. Early in the dispute, at the suggestion of the BVDRC, KRPQ set up a public meeting with property owners in the area. After getting confirmations by phone that many were interested in attending, the station rented and transported 40 chairs to its studios, assembled several of its experts and prepared to tell its side of the story. But by way of a "phone chain", tower opponents instructed neighbors not to attend the meeting, and as a result only one person showed up.

Project Denied, Future in Doubt

Written reports, many meetings as well as oral testimony at various hearings has convinced the county Permit and Resource Management Department staff that the project is sound and complies with all county ordinances, and after a staff-level environmental review, staff issued a declaration that there would be no significant environmental impact, and further recommended approval of the project. But despite this, the county Board of Zoning Adjustment on a 2-2 vote, with one member absent, failed to approve the project. KRPQ has appealed the decision to the county Board of Supervisors, and a hearing is pending. It is virtually certain that if the Supervisors approve the project, the neighbors will file suit in Superior Court, in an effort to delay the project for years, or kill it entirely. With an impending deadline for removal of the existing facility, it is possible that the if the neighbors are successful in

their efforts, the station could be forced off the air for up to several years.

Nine months after the permit process began, and after spending more than $100,000 on fees from various experts, the future of the project is at best cloudy, with years of senseless litigation being threatened that will consume many hundreds of thousands of dollars. All for towers that will extend no more than five feet above the trees and more than a half mile from the nearest viewpoint. In the meanwhile, since the radio station must work with finite financial resources, there will be a serious impact on the station's local programming services, assuming it is able to stay on the air.

It is clear in this instance that the authority of the FCC, who has issued a valid Construction Permit for the project, has been challenged. Without federal preemption, communities are able to pass ordinances that give individual residents the effective power to veto any further expansion of broadcasting, as well as preservation of existing service. In fact, many communities already have.

VII. Recommendations for change

The above illustration and many like it that the FCC will receive during the pendancy of this proceeding, makes it clear that governmental agencies outside of the FCC cannot be relied upon to responsibly comply with, let alone promote, federal telecommunications policy, and rather have taken it upon themselves to become "judge, jury and executioner" in matters that are, for good reason, specifically reserved for the FCC. By creating an absurd array of complicated roadblocks, requirements, procedures and delaying tactics, local and state instrumentalities have individually and collectively stepped far over the line of simply regulating

reasonable health and safety measures, and have taken over as the *de facto* regulators of communications. These "Local Communications Commissions" will not limit their devastating havoc to the proposed DTV roll-out, but in time will ravage all broadcast services, including FM radio. Therefore, FM radio *must* be included in all efforts by the FCC to regain regulatory control.

It is the recommendation of the petitioners in this NRPM and of these commenters that the FCC exercise its federal preemption powers in the public interest to put an end to burdensome regulations and endless disputes that put broadcasters at an unfair disadvantage. This should unquestionably include FM broadcasters.

Categorical Exemptions

The FCC should adopt a policy that preempts state and local land use and zoning rules that unreasonably prohibit or delay construction of any proposed transmission facilities that comply with FCC regulations. In addition, the FCC is urged to enact rules that would categorically exempt FM (as well as AM and TV) broadcasters, whose proposals comply with FCC rules, from state and local restrictions based on the following, unless a clearly defined and expressly stated health or safety objective that is fairly applied to all construction projects can be determined:

a) Environmental, health or interference effects of radio frequency emissions

b) Aesthetics, visibility, views and architectural design review criteria

c) Potential effect on real estate valuation or any vague "quality of life" issues

d) Types, numbers, size or appearance of any antenna(s) or supporting structure

e) Transmitter power output or frequency, effective radiated power, number of transmitters or users, hours of operation or limitation of access

f) Archeological or historical review or criteria

g) Subjective evaluations of compatibility with other land uses

h) Set-back requirements

i) Collocation requirements

j) Requirements for visual mitigation that would be costly, compromise coverage, or not be technically feasible

k) Requirements of demonstration of economic need to applicant or community

l) Restrictions on associated facilities, such as roads and buildings, that are not applicable to all other commercial, residential, public works and public utility projects.

m) Requirements for public hearings or notification of non-governmental parties

n) Requirements for EIR's for certain projects that:

   i) are located on private property

   ii) propose construction of less than a 1,000 square foot building

   iii) propose a tower not requiring FAA approved lighting or painting

   iv) and are in any area where any type of commercial, residential or agricultural development is allowed

Need for Expeditious Action

As requested by the petitioners, these commenters urge that state and local governments be required to approve any project related to the siting of an FM broadcast transmission facility in no less than 45 days, and if a project is rejected, the applicant must be provided with all of the specific reasons for the denial, fully supported by all substantial evidence, including reports, findings, testimony and all applicable legal citations. If no action is taken in the requisite time, the project must be considered automatically and finally approved. Certainly 45 days represents a more than reasonable amount of time. It is unimaginable that there can be anything wrong with a project, so serious as to warrant its dismissal, that cannot be discovered and documented in that amount of time. If local or state government officials cannot find any substantial evidence in the record of an eagle, a frog or a fragrant fritillary in 45 days, they probably don't exist, and even if they did, it is doubtful that the presence of an unmanned tower site would in any way disturb them.

Appeals Process

The Petitioners have recommended that a project denied by a local or state government should be subject to appeal to the FCC in the form of a request for declaratory relief, and that the FCC would be authorized to administer dispute resolution. While these commenters support this general idea, it is not without some hesitation. It is well regarded that the FCC is already overburdened with its current responsibilities. Adding the additional responsibility of acting a land use arbitrator, and with a case load that could quickly number over a thousand, the Commission would find

itself overwhelmed and severely back-logged. The resulting administrative delays would defeat the Petitioners goal of finding quick resolutions. Therefore, these commenters respectfully request to offer a better alternative.

Binding Arbitration Using Private Arbitrators

Overburdened courts and public agencies at every level have increasingly turned to Alternative Dispute Resolution ("ADR") using private arbitrators and with generally positive results. While methodologies often vary, most employ a panel of trained "hearing officers" comprised of retired judges, experienced attorneys and/or experts in the area of dispute. The lead organization in this type of forum is the American Arbitration Association ("AAA") with offices in most major cities. There are many good reasons to employ private arbitration in these types of disputes:

a) Hearings can be arranged and executed quickly and delaying tactics are discouraged

b) No need for litigants to travel to Washington DC since private arbitrators exist in or near every populated area of the country

c) Both parties in a dispute can participate in choosing from a list of potential hearing officers whose resumes are provided

d) Fees are reasonable and far less expensive than traditional venues

e) Discovery is limited

f) Use of attorneys is often optional

g) Decisions are binding, final, generally unappealable, and may be enforced in state or federal courts

h) There would be no administrative or financial burden on the FCC, or on state or federal courts

i) Services of private arbitrators could be deployed immediately, since a network of them is already in place

In allowing for ADR, the FCC can prescribe recommendations and requirements, as well as general guidelines to be observed in resolving disputes. In addition to those cited in "Categorical Exemptions" above, these should include:

a) Requirement for "Reasonable Accommodation" of the proposed broadcast facility.

b) Recognition as paramount, the goals of Congress and the FCC to promote and realize the vast potentialities of radio, as well as specific requirements for tower siting expressed in §73.315 of the FCC's Rules and Regulations.

c) Value of service to all potential listeners must be recognized and weighted heavily against any objections.

d) Economic impact on the broadcast station, including market competitive factors must be considered.

e) Any rules regarding telecommunications facilities may be no stricter than rules applying to any other type of construction.

f) Challenges must be based on *verifiable facts*, not fears or concerns.

g) No appeals allowed.

Penalties for Delays, Denials, Interference

a) Even if the FCC adopts a stringent federal preemption policy, it may still be possible for certain parties to frustrate and delay the process of facilities siting. It should be recognized that some objections may be